IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1426 OF 2007

M/s.Ghatge Patil Transport Limited,)
A Company incorporated under)
the provisions of Companies)
Act, through its Authorised)
Officer Shri Ganesh Vishwanath)
Phadke, (Administration &)
Legal) having its office at :)
517-E, Old Pune-Bangalore Road,)
Kolhapur, Pin Code - 416 001.).. Petitioners

Versus

1. The State of Maharashtra,)
Through its Secretary,)
Revenue and Forest Department,)
Government of Maharashtra,)
Mantralaya, Mumbai 400 032.)

2. The Conservator of Forests,)
Kolhapur Wild Life,)
Kolhapur, "C" Ward,)
Ganaji Galli, Bindu Chowk,)
Kolhapur.)

3. The Investigating Officer)
and Assistant Conservator)
of Forest, Koyana Wild Life,)
Chandoli National Park,)
At and Post Mandoor,)
Taluka Shirala,)
District - Sangli.)

4. The Union of India,)
Having its office at)
Aaykar Bhavan, Marine Lines,)
Mumbai - 400 002.).. Respondents

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Shri V.A.Gangal and Ashok Gade, Advocates for the Petitioners.

Smt.A.S.Pai, APP for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR &
SMT.V.K.TAHILRAMANI, JJ

DATED : 29TH NOVEMBER, 2007

JUDGMENT : (PER R.M.S.KHANDEPARKAR, J)

1. Heard. Rule. By consent, the rule made returnable forthwith. Smt.Pai, the learned APP waives service for the Respondents.

2. By the present petition, the petitioners are challenging the constitutional validity of Sections 52 and 52(1-A) of the Indian Forest Act, 1927, as applicable to the State of Maharashtra, hereinafter called as "the said Act", being violative of Article 19(1)(g) and Section 300A of the Constitutional of India as also seeking to quash and set aside the Order dated 19th December, 2005 passed by the Range Forest Officer, Wild Life, Kolhapur in Case No.Crime/1591/2005-06 Kolhapur, the Order dated 31st October, 2006 passed by the Judicial Magistrate, First Class, Shirala, in Criminal Complaint No.183 of 2006 below Exhibit-72, and the Order dated 8th May, 2007 passed by the Additional Sessions Judge, Islampur, in

Criminal Revision Petition No.46 of 2006 and pray further for direction to the respondents for release of their vehicle bearing No.MH-09-Q/7246, hereinafter called as "the said Vehicle".

3. The petitioner company is engaged in the business of transportation of goods and is having its office at Kolhapur, and has several branch offices at various places. The said vehicle belongs to the petitioner and has all India permit for transport. On 29th August, 2005, the said vehicle was found transporting forest produce and therefore was seized by the officers of the respondents under the provisions of the said Act, as well as the provisions of the Wild Life (Protection) Act, 1972, hereinafter called as "the Wild Life Act". The forest produce involved in the matter are chips of shrubs known as "Mappia Foetida" which is popularly known as "Narkya Shrub" as well as "Amruta" and the same are used for preparation of medicines.

4. It is the case of the petitioners that pursuant to the seizure of the said vehicle, the same is getting rusted and rottened resulting in deterioration of its value and utility, and therefore, the petitioners requested for release of the said

vehicle on execution of a bond so that the said vehicle can be put to the beneficial use by the petitioners to whom it belongs to and can be produced before the concerned authority as and when required for the purpose of investigation or inquiry. The petitioners, therefore, moved an application before the competent authority under Section 60 of the said Act, which came to be rejected by the impugned order dated 19th December, 2005. The said order was sought to be challenged by way of Criminal Writ Petition before this Court being Criminal Writ Petition No.274 of 2006 which came to be disposed of as withdrawn on 28th July, 2006 with liberty to approach the Court of learned Magistrate to seek relief in terms of the provisions of the Code of Criminal Procedure. The petitioners, thereafter, filed an application under Section 451 of the Code of Criminal Procedure before the Judicial Magistrate, First Class, Shirala, which came to be rejected by the impugned order dated 31st October, 2006. The matter was carried in Revision Application before the learned Sessions Judge, Islampur, which was heard by the Additional Sessions Judge, Islampur, and was dismissed by the impugned order dated 8th May, 2007. Hence, the present appeal.

5. Initially when the petition was filed, the

petitioners have merely sought to challenge the impugned orders. However, by way of amendment to the petition in terms of the order dated 6th August, 2007, the petitioners have sought to challenge the constitutional validity of the Sections 52 and 52(1-A) of the said Act on the ground that the same are violative of Article 19(1)(g) as well as Article 300A of the Constitution of India.

6. We have heard at length the learned advocate for the petitioners and the learned APP for the respondents. While assailing the provisions of law comprised under Sections 52 and 52(1-A) of the said Act, the learned advocate appearing for the petitioners submitted that the said provisions of law are to be held as violative of fundamental right of the petitioners guaranteed under Article 19(1)(g) as the said provision of law impose unreasonable restrictions on the said fundamental right of the petitioners. The power given to the authorities to confiscate and forfeit the property even before filing of the chargesheet and the commission of offence by the party being proved beyond reasonable doubt is arbitrary and contrary to the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. It virtually amounts to confiscation and

forfeiture of the property even before the offence is established. It also results in depriving the person of his property without the authority of law, and therefore, is violative of Article 300A of the Constitution of India. The forfeiture of a property under the Wile Life Act must be preceded by 30 days notice. In view of non-compliance of such mandatory procedure, the impugned orders are non-sustainable. Besides, the petitioners being common carriers cannot be expected to know the details about the contents of the parcel required to be transported, and therefore, by no stretch of imagination, the petitioners can be said to have committed any offence either under the said Act or under the Wild Life Act. The chips were packed in gunny bags before being entrusted to the petitioners for transportation. Alternatively, it is their contention that the chips are not forest produce within the meaning of the said expression under the said Act or under the Wild Life Act, and therefore, no criminal liability can be foisted upon the petitioners. Reliance is sought to be placed in the decision in the matter of **Janu Chandra Waghmare & Ors. v. The State of Maharashtra & Ors.,** reported in AIR 1978 Bombay 119 and **State of West Bengal & Ors. v. Sujit Kumar Rana,** reported in (2004)4 SCC 129.

7. On the other hand, it is the case on behalf of the respondents that the goods which were transported through the vehicle of the petitioners were forest produce and such a vehicle is liable to be seized and confiscated in terms of the provisions of the said Act as well as the Wild Life Act. Once the property seized by the respondents is liable to be confiscated in terms of the provisions of the above statutes, the learned Magistrate cannot in exercise of power under Section 451 or 457 of the Code of Criminal Procedure, order return of those goods, and therefore, no fault can be found with the impugned orders. As regards the challenge to the constitutional validity of Sections 52 and 52(1-A) of the said Act, according to the respondents, there is absolutely no case made out for such challenge and hence the same should be rejected in liminee. Reliance is sought to be placed in the decisions in the matter of **State of Karnataka v. K.Krishnan,** reported in JT 2000(9) SC 356, **Sushila Saw Mill v. State of Orissa & Ors.,** reported in (1995)5 SCC 615, **T.V. Balakrishnan v. State of T.N. & Ors.,** reported in 1995 Supp(4) SCC 236 and **State of M.P. v. S.P.Sales Agencies & Ors.,** reported in AIR 2004 SC 2088.

8. The challenge to the constitutional validity

of Section 52 and 52(1-A) of the said Act is two fold, namely, firstly that the said provisions of law impose unreasonable restrictions on the freedom of occupation, trade and business assured under Article 19(1)(g) of the Constitution in as much as that the provisions empower confiscation and forfeiture of the property even before issuance of charge sheet and offence is established and the person is convicted, and secondly that the person is sought to be deprived of the property without the authority of law in contravention of Article 300A of the Constitution inasmuch as that even prior to the conviction in the criminal proceedings, the property is confiscated. The other challenges are three-fold. Firstly that the product transported by the petitioners in the petitioners' vehicle was not forest produce. Secondly that there is no notice issued under the provisions of Wild Life (Protection) Act, 1972, and therefore, the seizure/forfeiture is illegal. And thirdly that the petitioners, as common carrier, are not expected to know the contents of packet transported by the petitioners and this aspect is totally ignored.

9. Section 52 of the said Act deals with the subject of seizure of property liable to confiscation and forfeiture. Sub-section (1) thereof provides that

when there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any forest officer or police officer.

10. Section 52(1-A) of the said Act provides that any forest officer or police officer may, if he has reason to believe that a vehicle has been or is being used for the transport of forest produce in respect of which there is a reason to believe that a forest offence has been or is being committed, require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary examination of the contents in the vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person in charge of the vehicle. Sub-section (2) thereof provides that every officer seizing any property under the said Section shall place on such property or the receptacle of vehicle (if any) in which it is contained, a mark indicating that the same has been so seized and make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made provided that when the

forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior. Further, proviso provides that where the offence on account of which the seizure has been made is in respect of timber, sandalwood, firewood, charcoal or such other forest produce as may be notified by the State Government from time to time and referred to as the ‘notified forest produce’ and which is the property of the State Government, such officer shall make a report of such seizure also to the concerned authorised officer under Section 61A. The explanation clause clarifies that the expression "property of Government" and "property of the State Government" include the property belonging to the forest Development Corporation of Maharashtra Limited.

11. Apparently, Section 52 relates to the power of seizure and confiscation in relation to the goods which are forest produce within the meaning of the said expression under the said Act. The term "forest produce" has been defined in Section 2(4) to include (a) timber, charcoal, caouchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers,

mahua seeds, kuth and myrabolams, when found in, or brought from a forest or not, and it also includes the following items when found in or brought from a forest:-

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(iv) peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries).

The term "timber" is defined under Section 2(6) to include trees when they have fallen or have been felled, and all wood whether cut up or fashioned or

hollowed out for any purpose or not. The term "tree" is defined under Section 2(7) in include palms, bamboos, skumps, brush wood and canes.

12. Plain reading of definition clauses in Section 2 referred to above would reveal that the same are ‘inclusive’. The illustrations referred to in the definition are not exhaustive. It is apparent from Section 2(4)(a) read with Section 2(6) of the said Act that timber in any form whether cut into pieces or fashioned would be a forest produce, without any restriction about the same being required to be found in or brought from a forest. In other words, the definition being very wide, any piece of wood could be a forest produce within the meaning of the said expression under the said Act.

13. It is, therefore, clear that the definition of the term "forest produce" is not only confined to the trees, plants or bushes, but it even takes in its grip all the articles and goods which are produced or found in the forest, as was held by Allahabad High Court in State of **U.P. v. District Judge, Bijnor & Ors.,** reported in AIR 1981 Allahabad 205. Indeed, the purport of the definition clause in relation to the term "forest produce", is abundantly clear that the

same is quite wider and it includes natural produce as well as the product prepared, out of such produce by a human mechanism. Certainly, human mechanism will also include involvement or utilisation of modern plant and/or machine. In that sense, chips, though may not be classified as a natural produce, it also cannot be held that such article prepared and known as ‘finished goods’ would loose its original identity on account of such processing on the natural produce. The finished product would necessarily identify with its source which has been used as raw material. This was clearly explained by the Apex Court in **Kishan Lal v. State of Rajashtan,** reported in AIR 1990 SC 2269 wherein it was held that "rice or dal produced in mill have been held to be agricultural produce." Being so, it is explicit that besides the produce of forest which has a natural growth, it also includes within the definition any product manufactured out of a forest produce with the aid of a human skill. In fact, this Court in **State of Maharashtra & Ors. v. Suresh Rameshwardas Lohiya,** reported in 1993 Cr.LJ 1557 = 1993 Mh.LJ 103, while dealing with the matter in relation to the scope of the term "forest produce" had in no uncertain terms rejected the contention that the forest produce is confined and restricted to only those produce naturally grown in the forest.

14. It is settled law that certain restrictions are always implicit in and for proper exercise of right which is assured under the Constitution or a statute. The fundamental rights are to be harmoniously construed so that they are properly promoted with minimum of such implicit and necessary restrictions, as was held by the Apex Court in **M.H.Devendrappa v. Karnataka State Small Industries Development Corporation,** reported in AIR 1998 SC 1064. Being so, citizens cannot complain of every such restriction imposed for enjoying the fundamental rights unless the restrictions are either unreasonable or unwarranted in public interest. The test of reasonableness would be that there must be a direct and proximate nexus or reasonable connection between the restrictions imposed and object sought to be achieved. The existence of such nexus or connection would give rise to a strong presumption in favour of the constitutionality of the statutory provision, **(** Vide : **M.R.F. Ltd. v. Inspector Kerala Govt.,** reported in (1998)8 SCC 227.**)** It is also settled law that a restriction which is not unreasonable even though it goes to the extent of extinguishment of the individual’s title of the property and causes hardship in individual cases or imposes absolute liability,

that would not render statutory provision to be unconstitutional. **(** Vide: **State of Maharashtra v. Rao Himmatbhai Narbheram,** reported in AIR 1970 SC 1157 and **Sivarajan P.V. v. Union of India,** reported in AIR 1959 SC 556.**)**

15. The provisions of Section 52 and Section 52(1-A) of the said Act obviously relate to the power of seizure, confiscation and forfeiture of the forest produce along with the vehicle used for transporting the same without proper authority or license. It cannot be disputed that the same are in keeping with the object and purpose behind the enactment of the said Act which is clearly revealed from the preamble of the said Act which states that the said Act has been enacted to consolidate the law relating to forest, transit of forest produce and duty leviable on timber and other forest produce.

16. Perusal of the provisions of law comprised under Sections 52 and 52(1-A) of the said Act nowhere discloses any restriction which can be said to be unreasonable or beyond the scope of the object of the statute for the purpose for which the statute has been brought in force. The provisions of law enacted for regulated enjoyment of the right in relation to a

particular occupation or business cannot be said to be unreasonable unless the power given to the authority to ensure due compliance of the regulations can be disclosed as per se arbitrary, or so unlimited that it can be abused and can be exercised to defeat the very purpose of the said Act. That is not the case of the petitioners in relation to the provisions of law comprised under Sections 52 and 52(1-A) of the said Act. Apart from contending that the provisions imposed unreasonable restrictions, the petitioners have not been able to elaborate the same to justify challenge regarding constitutional validity on the first ground of challenge.

17. As regards the contention that the said provisions of law empower confiscation and forfeiture even before the chargesheet is filed and offence is proved, it is to be noted that the confiscation and forfeiture has nothing to do with the criminal proceedings for the offences committed under the said Act. The power of confiscation and forfeiture assured under the said provisions of law is in the adjudication proceedings which are totally different from the criminal proceedings and one is not subject to or control by another. In fact, the law on this point is well settled by the decision of the Apex

Court in **S.P.Sales Agencies's case (supra).**

18. The Apex Court in **S.P.Sales Agencies's case (supra),** while dealing with the question as to whether confiscation proceeding under the said Act can be initiated only after launching criminal prosecution or it is open to the forest authorities upon seizure of forest produce to initiate both or either, after taking note of various provisions of the said Act, held that "The power of confiscation, exercisable under Section 52 of the Act cannot be said to be in any manner dependant upon launching of criminal prosecution as it has nowhere been provided therein that the forest produce seized can be confiscated only after criminal prosecution is launched, but the condition precedent for initiating a confiscation proceeding is commission of forest offence." Taking note of earlier decisions in the case of **State of W.B. v. Gopal Sarkar,** AIR (2002) SC 221 and **Divisional Forest Officer & Anr. v. G.V.Sudhakar Rao & Ors.,** reported in AIR 1986 SC 328, the Apex Court reiterated its earlier view that the power of confiscation is independent of any criminal prosecution for the forest offence committed. Indeed, in **Sudhakar Rao's case (supra)**, it was clearly ruled that:-

"The conferral of power of confiscation of seized timber or forest produce and the implements etc. on the Authorized Officer under sub-section (2-A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under sub-section (2-A) of Section 44 of the Act, where a Forest Officer makes a report of seizure of any timber or forest produce and produces the seized timber before the authorized officer along with a report under Section 44(2) the authorized officer can direct confiscation to Government of such timber or forest produce and the implements etc. if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under Section 20 or 29 of the Act."

In fact, the above decision is a complete answer to the various contentions sought to be raised by the petitioners while challenging seizure of the vehicle and it does not require further adjudication of those contentions.

19. The Apex Court in **K.Krishnan's case (supra),** while dealing with the case wherein a jeep was seized along with forest produce which was being transported in the said vehicle and submitted to the forest officer for the purpose of confiscation, and the same was sought to be challenged, after taking into consideration various provisions of the said Act, held that :-

> "the provisions of the Act are required to be strictly complied with and followed for the purpose of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence, the Authorised Officer or the

Appellate Authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produce and the tools, boats, vehicles, cattles, etc., used in the commission of the forest offence, which are liable to forfeiture, should not be released. This, however, does not debar the officers and the authorities under the Act including the Appellate Authority to pass appropriate orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother earth and the atmosphere surrounding it. **The Courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and unpolluted atmosphere.**

> We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any."
>
> (Emphasis supplied.)

The facts of the case in hand are almost similar to those of **K.Krishnan's case (supra)**. In fact, the ruling by the Apex Court in **K.Krishnan's case (supra)** squarely applies to the facts of the case in hand.

20. As regards the second ground of challenge on the point of constitutional validity of the said provision, it is to be noted that since the criminal proceedings having nothing to do with the adjudication proceedings, and one being not subjected to or controlled by another, the contention about deprivation of the property in violation of the provisions of Article 300A of the Constitution is totally devoid of substance. The adjudication proceedings are always subject to the detail procedure regarding opportunity of being heard to the concerned party.

21. Section 59 of the said Act empowers the aggrieved party to file appeal against the order passed under Section 52 to the competent authority whereas the orders passed under Sections 55, 56 and 57 of the said Act by the Magistrate can be subjected to appeal before the Sessions Court.

22. Section 60 of the said Act provides that when an order for confiscation of the property has been passed under Section 55 or Section 57, as the case may be, the period limited by Section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all encumbrances.

23. There are elaborate provisions made in the said Act for the purpose of the procedure to be followed for confiscation of the property found to have been used in commission of forest offence. Section 61A to Section 61F of the said Act, as applicable to the State of Maharashtra, deal with the

same. Section 61A(1) of the said Act specifically provides that notwithstanding anything contained in any of the provisions of Chapter IX of the said Act or any other law for the time being in force, where a forest offence necessary is believed to have been committed in respect of any notified forest produce. The officer seizing such property shall produce the same along with all tools, ropes, chains, boats, vehicles, carts and cattle used in committing such offence before an officer. In terms of sub-section (3) thereof, if he is satisfied that the forest offence has been committed in respect of such property he may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of property so seized together with all tools, boats, vehicles and cattles used in commission of such offence. Sub-section (4)(a) thereof empowers such officer to sell such confiscated property by way of public auction, whereas, clause (b) of sub-section (4) empowers confiscation of proceeds of sale of such property.

24. Section 61B deals with the procedure to be followed for confiscation and it provides for issuance of show cause notice and hearing the interested person before ordering confiscation. Section 61C maces

provision for revision of order passed by such authority, whereas, Section 61D provides for appeal to the Sessions Judge against the order passed under Section 61A or Section 61C. Section 61E provides that the award of any confiscation under Section 61A or Section 61C or Section 61D would not prevent the infliction of any any punishment to which the person affected thereby is liable under the said Act or any other law for the time being in force. Section 61F provides that when an order for confiscation of any property is passed under the said Act and such order becomes final, then such property or the sale proceeds thereof vest in the State Government free from all encumbrances.

25. It is not that the law makers were unmindful of the probability of misuse of powers by the forest officer in relation to seizure of property under the said Act. To avoid any such probability, the said Act under Section 62 provides that any forest officer who vexatiously and unnecessarily seized any property on pretence of seizing property liable to confiscation or forfeiture under the said Act shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both. Sub-section (2) thereof provides that

any fine so imposed or any portion thereof shall if the convicting court so directs be given as compensation to the person aggrieved by such seizure.

26. The Scheme of the said Act therefore clearly reveals that the said Act is a Code by itself inasmuch as that right from the inception of the forest produce till the confiscation and vesting of title thereof in favour of the Government, there is elaborate procedure in that regard safeguarding every right of the citizen in relation to the forest produce. Perusal of Section 52 of the said Act reveals that the same relates to the power of Government to seize and confiscate and forfeit the forest produce illegally sought to be transported or used. The said provision read with the other provisions of law under the said Act, at once, discloses that the forest goods can neither be seized nor confiscated without following the prescribed procedure including an opportunity of being heard to the person found in the possession of forest produce contrary to the provisions of the said Act. The said provisions of law specifically refer to the goods which are in the nature of forest produce. The same do not relate to any type of goods. The term "forest produce", as already seen above, is clearly defined under Section 2(4) of the said Act. Undoubtedly, it

includes ‘timber’ in its every form, raw as well as fashioned. Being so, piches or lacs produce of wood of a tree would include timber. Section 2(6) clearly specifies that the timber would not merely mean the wood utilised for roof or door or window panels of a house but it would also include a wood from the tree fallen or felled on the ground. It also clarifies that such wood may be a raw wood or fashioned or hollowed wood. Obviously, therefore, the chips which were in gunny bags would amount to timber within the meaning of the said expression under the said Act, and therefore, would be a forest produce.

27. The forest produce being the national wealth, it is but natural that proper safeguard and control of the Government is maintained in relation to the movement of such produce in the State. In such cases, it is reasonable to have restrictions on such movement, which may, in certain circumstances, extend to confiscation of the produce in case of violation of the provisions of law relating to the movement of such produce. It would not offend Article 19(1)(g) of the Constitution of India. (Vide : **Madhya Bharat Cotton Association Ltd. v. Union of India & Anr.,** reported in AIR 1954 SC 634)

28. Section 52 of the said Act specifically refers to the forest produce within the meaning of the said expression under the said Act. The said provision of law merely regulates and controls the movement of the forest produce within the country. Forest is a national wealth and obviously therefore forest produce is also a national wealth. It is but obvious that the Government has to have control over the movements and utilisation of such national wealth. Regulatory measures incorporated in Section 52 of the said Act, by no stretch of imagination, can be held to be violative of Article 19(1)(g) of the Constitution of India.

29. In **Sushila Saw Mill's case (supra),** it was clearly held that the right to carry on trade or business envisaged under Article 19(1)(g) is always subject to statutory regulation, and it is settled law that in the public interest, restriction on the said Article may in certain rare cases include total prohibition. It was also held that preservation of the forest is a matter of great public interest and the statute incorporated to impose total ban in the prohibited area to carry on saw mills business or sawing operation within the prohibited area would be in the public interest and therefore cannot be held to

be ultra vires the provisions of the said Act. Similarly, in **T.V.Balakrishnan's case (supra),** it was held that regulatory provisions restricting the manner of exercise of right guaranteed under Article 19(1)(g) of the Constitution do not offend constitutional mandate and cannot be said to be violative of the provisions of Article 300A of the Constitution. The challenge to the statutory provision of the said Act therefore is totally devoid of substance.

30. The dominant object of the said provisions of law is to avoid indiscriminate use and destruction of the forests in the country. They are essentially to control and to keep proper and effective check upon the illegal movements of the forest produce in the State. If the movement of the forest produce and by-products thereof is not controlled and regulated, and the violations of the rules and regulations in that regard are not penalised and the tools and vehicles involved in such violations are not seized and confiscated, then it would encourage destruction of forest which would lead to serious and uncontrollable environmental problems. Unrestricted use of forest and forest produce could result in ecological imbalance, and being so, the restrictions on the use thereof and consequently in relation to the

movement of forest produce is obviously warranted and justified. Article 48-A of the Constitution of India clearly requires the State to endeavour to product and improve the environment and to safeguard the forests and wild life of the country. So also is the duty of every citizen in the country, in terms of Article 51-A of the Constitution to protect and improve the natural environment including forests, lakes, rivers and wild life. Taking into consideration the prevailing situation in the country, by no stretch of imagination, it can be said that the restrictions imposed on the movement of the forest produce by the said provisions of law are unreasonable.

31. As regards the grievance about non-compliance of Section 58H of the Wild Life Act, it is to be noted that undoubtedly the said provision relates to the notice of forfeiture of property. Sub-section (1) thereof provides that if having regard to the value of the properties held by any person to whom Chapter VI-A applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of a report from any officer making an investigation under Section 58-E or otherwise, the competent authority for the reasons to

be recorded in writing believes that all or any of such properties are illegally acquired properties, it may serve a notice upon person calling upon him within a period of thirty days specified in the notice to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the State Government and in support of his case indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars. Undoubtedly, the applicability of Section 58-H would arise only in case where Section 58-A is attracted and the said Section provides thus:-

> "58-A. Application.- The provisions of this Chapter shall apply only to the following persons, namely:-
>
> (a) every person who has been convicted of an offence punishable under this Act with imprisonment for a term of three years or more;
>
> (b) every associate of a person referred

to in clause (a);

(c) any holder (hereinafter in this clause referred to as the present holder) of any property which was at any time previously held by a person referred to in clause (a) or clause (b) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration."

In order to insist for compliance of Section 58-H, the petitioners have to admit that they should fall in one of the categories specified under Section 58-A. It is only when the petitioners fall in one of those categories under Section 58-A, the provisions of 58-H would be attracted. It is not the case of the petitioners that Section 58-A is attracted in the matter, nor it is the case revealed from the order passed by the Range Forest Officer or the learned Magistrate or the learned Additional Sessions Judge that the property is subject to the provisions of Chapter VI-A of the Wild Life Act. In any case, it is

too premature to raise this point as the proceedings for the purpose of confiscation are yet to complete.

32. As regards the contention that the petitioners being common carrier were not expected to know the contents of the parcel, undisputedly, the delivery challans issued by the petitioners in relation to the gunny bags which were transported by the petitioners from the vehicle clearly disclosed the contents of gunny bags. They clearly revealed that the gunny bags contained Mappia Foetida. In any case, it is too premature to interfere in the impugned orders on this ground and without the appropriate decision by the competent authority on this disputed question of fact in appropriate adjudication proceedings for the purpose of forfeiture of vehicle.

33. As regards the contention that Mappia Foetida is a medical plant and is not covered by the Wild Life Act. As already seen above, it constitutes timber within the meaning of the said expression under the said Act, and therefore, it falls under the category of the said Act irrespective of the fact whether the same is a medicinal plant or not.

34. The decision of Full Bench in **Janu Chandra**

Waghmare's case (supra) is of no help to the petitioners. That was a case wherein the validity of Maharashtra Private Forests (Acquisition) Act, 1975 being the Act No.29 of 1975 as amended by Act No.72 of 1975 was under challenge on three grounds, viz: lack of legislative competence, restrictions on freedom assured under Article 301 of the Constitution of India and trenching done by enactment upon the field occupied by or under the Central Act No.67 of 1957 i.e. Mines and Minerals (Regulation and Development) Act, 1957. Being so, all the observations made thereunder have to be understood in relation to the point which was required to be decided in the said case. The said point being totally different from the points which are sought to be raised in the matter in hand, the decision of Full Bench of this Court in **Janu Chandra Waghmare's case (supra)** is of no help to the petitioners.

35. As regards the decision of the Apex Court in **Sujit Kumar Rana's case (supra),** it was a case wherein the forest produce belonging to the State and the vehicle carrying the same seized by the forest officer and in those facts the point which arose before the Apex Court was relating to the applicability of Section 482 of the Code of Criminal Procedure, 1973

for quashing a proceeding for confiscation of forest produce under the provisions of the said Act as amended by the State of West Bengal. Considering the provisions of law, the Apex Court held that an order of confiscation of forest produce under the provisions of the said Act would not amount either to a penalty or punishment, provided such order is passed after valid seizure and the forest officer is satisfied about the ownership of the forest produce in the State and the order of confiscation is not passed mechanically. In the case in hand, we are at the stage of seizure of the property and the proceedings regarding confiscation and forfeiture are yet to be concluded. Being so, the decision of the Apex Court in **Sujit Kumar Rana's case (supra)** is also of no help to the petitioners.

36. In the facts and circumstances of the case, and for the reasons stated above, we do not find any substance in the contentions raised on behalf of the petitioners. No case is made out for interference in the impugned order. Hence, the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(SMT.V.K.TAHILRAMANI, J)